

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 5, 2018

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2017-1362-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 305, Consolidated Permits
Dental Office Pretreatment Standards (40 CFR Part 441) Adoption by
Reference
Rule Project No. 2017-009-305-OW

Background and reason(s) for the rulemaking:

The United States Environmental Protection Agency (EPA) has issued technology-based pretreatment standards to reduce the discharge of mercury-containing dental amalgam to publicly owned treatment works (POTWs). The final rule was published in the *Federal Register* on June 14, 2017, and created new 40 Code of Federal Regulations (CFR) Part 441. Minor corrections to the rule were published in the *Federal Register* on June 26 and July 5, 2017.

Dental offices, which discharge mercury present in amalgam used for fillings, are a source of mercury discharges to POTWs. Mercury entering POTWs frequently partitions into the sludge and enters the environment through the incineration, landfilling, or land application of sludge or through surface water discharge. The final rule requires dental offices to use amalgam recovery devices and two best management practices: one which prohibits the discharge of waste ("or scrap"), and the other which prohibits the use of line cleaners that may lead to the dissolution of solid mercury when cleaning chair-side traps and vacuum lines.

The final rule also establishes that dental dischargers are not significant industrial users (SIUs) or categorical industrial users (CIUs). This reduces most of the oversight and reporting requirements in 40 CFR Part 403, such as permitting and annual inspections if they were designated as SIUs or CIUs, unless required by the Control Authority (CA). Lastly, the final rule reduced reporting for dental offices in comparison to reporting requirements for other industrial users subject to categorical pretreatment standards. The final rule requires a One-Time Compliance Report (OTCR) be submitted to the CA. Existing dental offices that are subject to the rule must comply with the standards by July 14, 2020 and submit an OTCR by October 12, 2020, or 90 days after transfer of ownership. New dental offices that are subject to the rule must comply immediately with the standards and submit an OTCR within 90 days of discharge to a POTW, or 90 days after transfer of ownership.

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would amend 30 TAC §305.541 to adopt 40 CFR Part 441 by reference.

B.) Scope required by federal regulations or state statutes:

The proposed rulemaking is not required by state or federal statute, but is necessary to keep commission rules synchronized with EPA's rules as required by the Memorandum of Agreement (MOA) with EPA regarding National Pollutant Discharge Elimination System (NPDES) authority.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff has no additional recommendations.

Statutory authority:

Texas Water Code (TWC), §5.102, General Powers
TWC, §5.103, Rules
TWC, §5.105, General Policy
TWC, §5.120, Conservation and Quality of Environment

Effect on the:

A.) Regulated community:

It is anticipated that this rule will have a minor effect on the regulated community.

- Existing dental offices regulated under this rule would be required to be in compliance with the rule by July 14, 2020, and to submit an OTCR to their CA by October 12, 2020, or 90 days after transfer of ownership.
- New dental offices that begin the discharge of wastewater to a POTW on or after July 14, 2017, have to immediately be in compliance with the rule and submit an OTCR to the CA within 90 days, or within 90 days after transfer of ownership.

B.) Public:

There would be no effect on the public.

C.) Agency programs:

The national pretreatment regulations in 40 CFR Part 403 designate the TCEQ as the CA for regulated dental offices that discharge into POTWs without an approved Texas Pollutant Discharge Elimination System (TPDES) pretreatment program. The TCEQ, as the CA, will be required to identify and notify and receive OTCRs from regulated dental offices that discharge into POTWs without an approved pretreatment program. EPA estimates that there are approximately 2,000 regulated dental offices in Texas that would be required to submit OTCRs to TCEQ.

In accordance with the regulations in 40 CFR Part 403, the TCEQ is the Approval Authority (AA) for approved TPDES pretreatment programs and as such will need to

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review program modifications submitted by the CAs in order to implement and enforce the rule. Additionally, the Water Quality Division and Environmental Assistance Division will conduct public outreach and update educational materials as needed.

Stakeholder meetings:

No stakeholder meetings are planned, since the requirements have been established in federal regulations. However, stakeholders will be notified of and updated quarterly about this rulemaking during the Water Quality Advisory Workgroup meetings. The CAs attending the 2017 EPA Region VI Pretreatment Association Workshop on July 27, 2017, were also notified about this rulemaking. The TCEQ will send a notification letter to the 73 approved pretreatment programs in Texas. Additionally, there will be a rulemaking public hearing offered on March 8, 2018, in Austin.

Potential controversial concerns and legislative interest:

Staff is unaware of any controversial concerns or legislative interest.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The alternative is to leave §305.541 unchanged, which would prevent the commission from implementing and enforcing the new dental office pretreatment standards in 40 CFR Part 441. As a result, the TCEQ could be considered out of compliance with the MOA requirement that the TCEQ "ensure new federal NPDES regulations are incorporated into state regulations within one year of federal promulgation or within two years if a state statute must first be enacted."

Key points in the proposal rulemaking schedule:

Anticipated proposal date: January 24, 2018

Anticipated *Texas Register* publication date: February 9, 2018

Anticipated public hearing date (if any): March 8, 2018

Anticipated public comment period: February 9, 2018-March 12, 2018

Anticipated adoption date: June 20, 2018

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Attachments:

40 CFR Part 441

cc: Chief Clerk, 2 copies
Executive Director's Office

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